

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 242 of 2000

1. State of Goa
through Dy. Collector &
Land Acquisition Officer,
South Goa, Margao, Goa.
 2. The Director of Sports &
Youth Affairs,
Panaji, Goa.
- ... Appellants.

Versus

1. Mrs. Maria Ana Emericana
Josefina Clotildes Pimenta e Costa.
 2. Mrs. Irene Sales Costa.
 3. Mrs. Filomena Violeta D'Costa.
 4. Mrs. Maria Olimpia Sarita Costa.
 5. Mrs. Rosita Zemira Milagres Costa,
All r/o Pequeno Rumbordem,
Curtorim, Salcete, Goa.
- Respondents.

Mr. P.A. Kamat, Government Advocate for the Appellants.

Mr. J. Vaz, Advocate for the Respondents.

**CORAM: S. A. BOBDE &
N.A. BRITTO, JJ.**

DATE: 21ST JULY, 2004 .

ORAL JUDGMENT : (PER BRITTO, J.)

The State has preferred this appeal against the

Judgment/Award dated 28.6.2000 of the learned Addl. District Judge (II), Margao.

2. Some facts are required to be stated to dispose of the present appeal.

3. The Government, vide Notification dated 7.4.92 issued under Section 4(1) of the Land Acquisition Act, 1894 and published on Gazette dated 9.4.92 acquired land admeasuring 450 sq.m. from survey No.215/8 and 9700 sq.m. from survey No.217/4 of village Curtorim belonging to the respondents and by virtue of Award dated 5.9.94 the Land Acquisition Officer (LAO, for short) awarded to the respondents, compensation at the rate of Rs.5/- per sq.m., and as against the same, the respondents got a reference made to the District Court, claiming enhancement at the rate of R.250/- per sq.m.

4. In the said reference, the respondents examined in support of their case, AW.1 Filomena and AW.3 Ernesto Moniz a Civil Engineer as an expert. The respondents also produced a Sale Deed dated 2.1.91 and in support of it examined AW.2 Santana. The said sale deed is in respect of a plot of land admeasuring 401 sq.m. Of Survey No.200/20 situated at a distance of about a kilometer from the acquired land, in the same village. It was sold at the rate of [Rs.164.33](#) per sq.m.

5. The learned Addl. District Judge using the said plot of the Sale Deed as a guide and after making deductions to the extent of 90% fixed the price of the acquired land at the rate of Rs.55/- per sq.m. The learned Addl. District Judge thereafter, on account of increase in price awarded to the respondents 10% per year and thus fixed the market rate at the rate of Rs.60/- per sq.m.

6. At the time of arguments, Shri Kamat, the learned Government Advocate, made a grievance that the respondents had purchased land by Sale Deed dated 10.9.88 for access to their property which has been acquired, but the respondents did not produce the sale deed in respect of the same.

7. Shri Vaz, the learned counsel for the respondents made an application in terms of Order 41, Rule 27 and produced a copy of the said sale deed dated 10.9.88 and this sale deed shows that the respondents had purchased an area of 138 sq.m. at the rate of Rs.200/- per sq.m. In fact, Shri Vaz has submitted that the said sale deed dated 10.9.88 was handed over by the respondents to their valuer, the said Engineer Shri Moniz but remained without being produced due to oversight. In our opinion, the said sale deed dated 10.9.88 does not take the appellants neither here nor there.

8. The learned Addl. District Judge, in our view, has rightly used

the sale deed dated 2.1.91 as a guide for the purpose of fixing the compensation of the acquired land. There was no dispute that the Respondents had obtained a provisional **N.O.C.** for development of their land as early as on 2.12.85 which showed that they wanted to develop their land and selling the same in plots. As rightly submitted by Shri Kamat, the learned Government Advocate, the learned Addl. District Judge has in terms, not made a deduction considering that the plot of the said sale deed dated 2.1.91 was a small plot as compared to the acquired area of 10,150 sq.m., but there is no dispute that the overall deduction made by the learned Addl. District Judge is 90%. Shri Kamat has placed reliance on the judgment of this Court in the case of **Madhusudan R. Mahambre** (2002 (6) Bom. C.R. 163) and submitted that deduction towards development charges should have been 60% as against 40% made by the learned Addl. District Judge. We are of the view that there is no uniform or hard and fast rule as to the percentage of deduction which has to be made towards development or for that matter for leaving open spaces. The percentage of deduction cannot be the same in all cases and it will depend upon the nature of the acquired land, the place at which it is situated and the overall development in the locality etc. vis-a-vis the nature of the sale deed/s sought to be relied upon and so many other variable factors which will vary from case to case. The Supreme Court itself has been making deductions varying from 33-1/3 to 65% (see the case of **Basavva** (1996 (9) SCC 640).

9. The learned Addl. District Judge, after having taken a deduction of 40% towards development, took a further deduction of 25% because the plot of sale deed was situated more advantageously between two roads. Another deduction of 25% was made considering that the acquired land was situated close to the cemetery. The learned Addl. District Judge wa

s fully justified in awarding to the respondents 10% increase of price considering that the said sale deed was prior to the date of Notification under Section 4(1) of the Act. We do not find any infirmity in the finding recorded by the learned Addl. District Judge in fixing the market value of the acquired land at Rs.60/- per sq.m.

10. In view of the above, we find there is no merit in this appeal. Consequently the same is hereby dismissed. The parties are left to bear their own costs.

S. A. BOBDE, J.

sl.

N. A. BRITTO, J.